

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA
PLAINTIFF,

v.

DAVID M. COX
DEFENDANT.

Case No. 4:18CR00017-TWP-VTW

**DAVID M. COX'S SENTENCING MEMORANDUM
AND SUPPORTING MATERIALS**

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I. PRELIMINARY STATEMENT

This case is about a man who grew up with a lack of education, a difficult childhood and a man who made his living off the land, as well as his skills with his hands.

He is a very uncomplicated man who made a serious mistake, but on the other hand he is a man of great generosity and compassion for others. He is also a man who regrets being in front of this Court at this time.

This Court is required to enter a sentence that is “sufficient, but not greater than necessary” to satisfy the statutory sentencing objectives of promoting respect for the law, affording adequate deterrence, protecting the public, and providing the defendant with needed training and treatment. 18 U.S.C. § 3553(a).

Judging the conduct at issue against this backdrop, Mr. Cox respectfully suggests that a sentence of probation with appropriate monitoring and community service terms satisfies the objectives of sentencing.

II. DAVID COX’S HISTORY AND CHARACTERISTICS

In 1969, Mr. Cox was a 15 year old young man living in Clarksville, Indiana. While there he attended Clarksville Jr. High School, but he really didn’t like school. To be honest, he was a little wild and did some crazy things and hung out with young men who were much older than he was. His mother and the school thought he needed to talk to a psychiatrist, so he went to see Dr. Mary Jane. When

meeting with her he told her that he did not like school. He also told her that his mom was going to Our Lady of Peace to get shock treatments and his dad was an alcohol. After several sessions with Dr. Mary Jane, she thought he needed to leave his home as soon as possible. At that time, Mr. Cox lived in what was called New Clarksville, and it was considered the better part of town. The area down by the Ohio River, which was called Clarksville, was the poorer side of town.

He began a relationship with a woman by the name of Vicki Burns, whose father owned a bait house and fish market, on a dead end street just about where the Falls of The Ohio Museum is now located. When school was out for the summer, he worked for Ms. Burns dad at the bait house. While there alcohol was easy to obtain, so not only did he use it but the others around him were using it also.

When he turned 16 years old, his aunt co-signed for a car. He used the car to haul his hunting dog and trapping supplies, but he also lived in the car with only the clothes he had. He quit school and left home. He parked his car in the back of the bait house and worked at the fish market doing odd jobs.

His dad was a carpenter and had two brothers who were carpenters, so Mr. Cox began working at odd jobs in the carpentry business. By the age of 17, he was making enough money to move out of his car and into a trailer.

When he was 17, he asked Vicki and her parents for her hand in marriage and they went off to Tennessee. They were married on December 3, 1971. When they got back home, they moved into an apartment that Vicki's father owned.

During that time, Mr. Cox worked out of the labor union whenever possible and was also working at the bait house to help pay the rent. Mr. Cox, during those years, spent a lot of time fishing on the river and working in the carpentry business. It was a rough and hard life and he hung around with a lot of rough and tough people. Living on the river was very difficult with ups and downs, good times, bad times, happy times, and sad times. Mr. Cox stayed on the river until 1970 but shortly after he was married to Vicki, he wanted to have a child and his son David was born on October 21, 1972. In 1975 they had saved enough money to get a repossessed trailer and now off the river. He was doing remodeling work out of the labor union, tree trimming, and trapping.

The record reflects that years ago Mr. Cox was charged with illegal purchasing and transporting of animals. Mr. Cox and his wife had opened a zoo, called Close Encounters with Exotic that was open to the public. They bred animals to sell at auctions and other animal owners. This was when Mr. Cox was arrested for violating the Fish and Wildlife Act, involving the animals, which was a violation of the Lacy Act. At that time, he received probation and 200 hours of community service.

Mr. Cox has continued over the years his fishing and hunting and in 2001 sat on a special board, along with Steve Kenne and Tom Stevanavage, in helping the conservation officers of Kentucky Fish and Wildlife in rewriting the rules and changing regulations. Unfortunately for Mr. Cox, while working on the river he hired a man who turned out to be an undercover Conservation Officer and that is

where the violations stem from.

Mr. Cox is sorry for his involvement in the matter and in the process he has lost his fishing boat, trailer, motor and his right to fish for paddle fish. Concerning the guns that were found at the house, as indicated in the Presentence Report, a number of them belong to his son. Mrs. Cox had gone and gathered them a few days before the search of their property. Mr. Cox acknowledges that the saw-off shotgun had been in his family for years and he never shot the gun because it was an antique and believed that it was unable to shoot. He clearly acknowledges because of his prior felony conviction, he should not have had any such weapon in his home, or to be around or near guns.

The numerous letters submitted from the members of the community, that know Mr. Cox best, attest to his character over the last 30 years. He is a very supportive friend and dedicated and loving husband, father and grandfather.

III. ADVISORY GUIDELINE CALCULATION

The guideline range is merely advisory under the dictates of *Booker*. While the Court has a duty to calculate the guideline range, it is reversible error for this Court to presume that the guideline range is reasonable. *Nelson v. United States*, 129 S.Ct. 890 (2009); *United States v. Ross*, 501 F.3d 851, 853 (7th Cir. 2007). As demonstrated below, a Guideline sentence in this case would not be reasonable.

The Presentence Investigation Report calculates an advisory Guideline imprisonment range of between 46 months to 57 months, based on an offense level

of 23 in Criminal History Category I.

IV. A SENTENCE OF PROBATION IS SUFFICIENT TO ACHIEVE THE GOALS OF SENTENCING

Though this Court has an obligation to calculate the guideline range, the guideline range itself is advisory and may not be presumed reasonable. *Nelson*, 129 S.Ct. at 890; *Ross*, 501 F.3d at 853. After calculating the guideline range, the Court must consider the statutory sentencing factors. *Id.*

The Court's sentence must be "sufficient, but not greater than necessary" to, *inter alia*, "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). The Court must also consider "the nature of circumstances of the offense and the history and characteristics of the defendant," the "kinds of sentences available," the "need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," and the "need to provide restitution to any victims of the offense." 18 U.S.C. § 3553(a).

Within this framework, Mr. Cox respectfully submits that a non-custodial sentence is sufficient, but not greater than necessary, to satisfy the sentencing objectives.

A. DAVID COX'S HISTORY AND CHARACTERISTICS AND THE NATURE OF HIS CONDUCT WARRANT A NON-CUSTODIAL SENTENCE

As the letters submitted to this Court show, Mr. Cox is a kind and generous

person. The conduct for which he is accepting responsibility is an isolated aberration in his history and characteristics. He has completely obeyed all directives from this Court and from probation while on pre-trial release.

Congress has recognized “the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is an offender who has not been convicted of a crime of violence or an otherwise serious offense.” 28 U.S.C. § 994(j). Mr. Cox respectfully suggests that his characteristics and the nature of her offense make a non-custodial sentence sufficient, but not greater than necessary to satisfy sentencing objectives.

B. A NON-CUSTODIAL SENTENCE WOULD PROVIDE SUFFICIENT DETERRENCE AND PROTECT THE PUBLIC

In imposing sentence, this Court is required to consider the objectives of “afford[ing] adequate deterrence to criminal conduct” and “protect[ing] the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2); *Pepper v. United States*, 131 S.Ct. 1229, 1242 (2011). These objectives have already been well served even before the imposition of a sentence.

The conviction the Court will soon enter against him will carry collateral consequences. In addition to demonstrating the impact of the pending charges, the letters submitted to the Court also demonstrate that Mr. Cox is unlikely to reoffend. He has a deep support system of close friends and family. They have given a firsthand account of how difficult this has been for David.

**C. A NON-CUSTODIAL SENTENCE WOULD AVOID
SENTENCING DISPARITIES**

The Court is required to consider “the need to avoid unwarranted senten[ing] disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). Mr. Cox’s conduct was non-violent. His post-arrest conduct has shown substantial rehabilitation. The Court should consider ordering specific amounts of community service, as a component of a non-custodial sentence.

As these points reflect, a non-custodial sentence is justified to avoid unwarranted sentencing disparities.

V. CONCLUSION

For the foregoing reasons, Mr. Cox respectfully suggests the Court impose a sentence of probation with appropriate monitoring and community service terms.

Respectfully Submitted,

/s/ James H. Voyles, Jr.
James H. Voyles, Jr.

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CERTIFICATE OF SERVICE

I certify that on November 16, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ James H. Voyles, Jr.

James H. Voyles, Jr.

VI. SUPPORTING MATERIALS